

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Phillip Washington, Jr

Case No. 08-80512

Chapter 13

Social Security No. xxx-xx-1115
Address: 10 Forge Road, Durham, NC 27713

Debtor

MOTION TO MODIFY PLAN

NOW COMES the Debtor, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on April 4, 2008, with the Chapter 13 plan being subsequently confirmed on July 18, 2008
2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:

From: \$373.00 per month.

To: \$373.00 per month through May, 2011, followed thereafter by \$373.00 per month, starting September, 2011
3. In addition, the Debtor requests a "waiver" to move his Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. The Debtor agrees that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
 - a. The debtor is teacher and only gets paid 10 months out of the year. He is requesting waivers for a period of delinquency that has accrued due to his temporary unemployment.
5. An Amended Schedule I for the Debtor is attached hereto and is incorporated hereto by reference.
6. An Amended Schedule J for the Debtor is attached hereto and is incorporated hereto by reference.

7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes:
- a. Requesting Waivers.

Appended Application for an Additional Attorney Fee

8. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:
- a. Calls from and to the Debtor to discuss changes in his situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtor accordingly; and
- b. Contact with the Trustee's office concerning the proposed modification; and
- c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
- d. Drafting this Motion and Certificate of Service; and
- e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and
- f. Filing of the Motion; and
- g. Prospective attendance with Debtor at the hearing upon the motion, if any; and
- h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
- i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtor.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: August 11, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s John T. Orcutt

John T. Orcutt

North Carolina State Bar No.: 21210

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

CERTIFICATE OF SERVICE

I, Patty Cherigo, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on August 11, 2011 , I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee

Michael West
U.S. Bankruptcy Administrator

and by regular first-class U.S. mail, addressed to the following parties:

Phillip Washington
810 Forge Road
Durham, NC 27713

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Patty Cherigo
Patty Cherigo

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

| | | |
|--------------------------|--|---|
| Debtor's Marital Status: | DEPENDENTS OF DEBTOR AND SPOUSE | |
| Married | RELATIONSHIP(S): None. | AGE(S): |
| Employment: | DEBTOR | SPOUSE |
| Occupation | Teacher Assistant | Teacher Assistant |
| Name of Employer | Durham Public Schools | Chapel Hill - Carrboro City Schools |
| How long employed | 7 years | 12 year |
| Address of Employer | Administrative Unit PO Box 30002 Durham, NC 27702 | Lincoln Center Merritt Mill Road Chapel Hill, NC 27514 |

INCOME: (Estimate of average or projected monthly income at time case filed)

1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)
2. Estimate monthly overtime

| | DEBTOR | SPOUSE |
|----|--------------------|--------------------|
| 1. | \$ 2,444.92 | \$ 2,140.13 |
| 2. | \$ 0.00 | \$ 0.00 |

3. SUBTOTAL

| | |
|--------------------|--------------------|
| \$ 2,444.92 | \$ 2,140.13 |
|--------------------|--------------------|

4. LESS PAYROLL DEDUCTIONS

- a. Payroll taxes and social security
b. Insurance
c. Union dues
d. Other (Specify): **Term-Life Insurance**
Mandatory Retirement

| | |
|------------------|------------------|
| \$ 554.78 | \$ 499.95 |
| \$ 83.99 | \$ 39.43 |
| \$ 0.00 | \$ 0.00 |
| \$ 39.61 | \$ 47.88 |
| \$ 143.67 | \$ 126.59 |

5. SUBTOTAL OF PAYROLL DEDUCTIONS

| | |
|------------------|------------------|
| \$ 822.05 | \$ 713.85 |
|------------------|------------------|

6. TOTAL NET MONTHLY TAKE HOME PAY

| | |
|--------------------|--------------------|
| \$ 1,622.87 | \$ 1,426.28 |
|--------------------|--------------------|

7. Regular income from operation of business or profession or farm (Attach detailed statement)
8. Income from real property
9. Interest and dividends
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above
11. Social security or government assistance
(Specify):

| | |
|----------------|----------------|
| \$ 0.00 | \$ 0.00 |
| \$ 0.00 | \$ 0.00 |
| \$ 0.00 | \$ 0.00 |
| \$ 0.00 | \$ 0.00 |

12. Pension or retirement income

13. Other monthly income

(Specify):

| | |
|----------------|----------------|
| \$ 0.00 | \$ 0.00 |
| \$ 0.00 | \$ 0.00 |
| \$ 0.00 | \$ 0.00 |

14. SUBTOTAL OF LINES 7 THROUGH 13

| | |
|----------------|----------------|
| \$ 0.00 | \$ 0.00 |
|----------------|----------------|

15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)

| | |
|--------------------|--------------------|
| \$ 1,622.87 | \$ 1,426.28 |
|--------------------|--------------------|

16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)

| |
|--------------------|
| \$ 3,049.15 |
|--------------------|

(Report also on Summary of Schedules and, if applicable, on
Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

-NONE-

Debtor(s)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

(Spouse's Schedule)

| | | |
|--|----|--------|
| 1. Rent or home mortgage payment (include lot rented for mobile home) | \$ | 0.00 |
| a. Are real estate taxes included? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| b. Is property insurance included? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| 2. Utilities: | | |
| a. Electricity and heating fuel | \$ | 0.00 |
| b. Water and sewer | \$ | 0.00 |
| c. Telephone | \$ | 0.00 |
| d. Other _____ | \$ | 0.00 |
| 3. Home maintenance (repairs and upkeep) | \$ | 0.00 |
| 4. Food | \$ | 0.00 |
| 5. Clothing | \$ | 0.00 |
| 6. Laundry and dry cleaning | \$ | 0.00 |
| 7. Medical and dental expenses | \$ | 0.00 |
| 8. Transportation (not including car payments) | \$ | 220.00 |
| 9. Recreation, clubs and entertainment, newspapers, magazines, etc. | \$ | 0.00 |
| 10. Charitable contributions | \$ | 0.00 |
| 11. Insurance (not deducted from wages or included in home mortgage payments) | | |
| a. Homeowner's or renter's | \$ | 73.58 |
| b. Life | \$ | 0.00 |
| c. Health | \$ | 0.00 |
| d. Auto | \$ | 65.00 |
| e. Other _____ | \$ | 0.00 |
| 12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) <u>Real Property Taxes</u> | \$ | 144.59 |
| 13. Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.) | | |
| a. Auto | \$ | 0.00 |
| b. Other <u>See Spouse Detailed Expense Attachment</u> | \$ | 185.00 |
| 14. Alimony, maintenance, and support paid to others | \$ | 0.00 |
| 15. Payments for support of additional dependents not living at your home | \$ | 0.00 |
| 16. Regular expenses from operation of business, profession, or farm (attach detailed statement) | \$ | 0.00 |
| 17. Other _____ | \$ | 0.00 |
| Other _____ | \$ | 0.00 |
| 18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) | \$ | 688.17 |
| 19. Describe any increase or decrease in expenditures anticipated to occur within the year following the filing of this document: <u>None Anticipated</u> | | |

In re Phillip Washington, Jr.Case No. 08-80512

Debtor(s)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED
Detailed Expense Attachment

Other Utility Expenditures:

| | | |
|----------------------------------|----|--------|
| Cablevision | \$ | 60.00 |
| Internet Services | \$ | 36.00 |
| Cellular Phone | \$ | 135.00 |
| Total Other Utility Expenditures | \$ | 231.00 |

Other Expenditures:

| | | |
|----------------------------|----|--------|
| Chapter 13 Monthly Payment | \$ | 373.00 |
| Personal Care | \$ | 65.00 |
| Emergency/Misc. | \$ | 65.00 |
| Total Other Expenditures | \$ | 503.00 |

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Case No. 08-80512

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED
Spouse Detailed Expense Attachment

Other Installment Payments:

| | | |
|---|-----------|---------------|
| HSBC | \$ | 50.00 |
| Discover | \$ | 100.00 |
| GEMB/Wal-Mart | \$ | 35.00 |
| Total Other Installment Payments | \$ | 185.00 |